

JAN 08 2019

CITY CLERK'S OFFICE

CITY OF SPOKANE HEARING EXAMINER

Re: Joshua Duke's Request for the June) DECISION ON APPEAL OF
2016 revision of "The Spokane Police) REDACTION OF PUBLIC
Department Tactics Manual.") RECORDS
)

INTRODUCTION

This decision concerns an appeal, submitted pursuant to Section 6.5 of the City's Public Records Request Policy, challenging the redaction of a document produced in response to a public records request.

BACKGROUND FACTS

On November 6, 2018, Mr. Joshua Dukes submitted a public records request to the Spokane Police Department ("SPD"). See E-mail of MuckRock, 11-6-18, 8:20 PM. Mr. Dukes requested a copy of the June 2016 revision of The Spokane Police Department Defensive Tactics Manual (the "Manual"). See *id.*

On November 19, 2018, Terri Pfister, the City Clerk, acknowledged that the city received Mr. Dukes' PRA request on November 12, 2018. See E-mail of Pfister 11-19-18. Ms. Pfister further advised Mr. Dukes as follows:

The responsive document located by Police Department staff is available for your inspection and copying by accessing your "My Request Center" account through the City's public records portal (GovQA). Some information in the document has been determined to be exempt from disclosure and has been redacted. Included also for inspection/copying through your "My Request Center" account on the City's public records request portal is an exemption log which identifies the redacted information and the reasons for and statutes relied upon for withholding the information.

See *id.*

The exemption log states that the terms describing defensive tactics, on pages 2-5 of the Manual, were redacted. See Index of Material Produced – SPD Defensive Tactics Manual. In addition, the log states that the detailed descriptions of the defensive tactics, on pages 16-163 of the Manual, were redacted. See *id.* This material was redacted based upon the PRA exemption for "specific intelligence information" set forth in RCW 42.56.240(1). See *id.*

On November 30, 2018, Ms. Pfister sent Mr. Dukes an e-mail copy of the redacted document, following up on her prior correspondence. See E-mail of Pfister, 11-30-18, 3:22 PM. She also attached a copy of the exemption log. See *id.*

On December 10, 2018, Mr. Dukes objected to the redactions made by the city. See E-mail of J. Dukes, 12-10-18. Specifically, Mr. Dukes contended that the redactions violate the Public Records Act. See *id.* He then requested that the city provide him with an unredacted copy of the Manual. See *id.*

On December 19, 2018, Mr. Dukes advised that city that he was appealing the redactions made by the city pursuant to Section 6.5 of the City's Public Records Request policy. See E-mail of Dukes, 12-19-18. Mr. Dukes explained:

*I am appealing these redactions under RCW 42.56.030. The titles of sections are not *specific* information and are therefore not acceptable for redaction. Additionally, given the choice to redact information that is clearly not allowed to be redacted, I contest the redaction of all remaining information.*

See *id.*

On December 27, 2018, the City Clerk's office forwarded Mr. Dukes' appeal to the Hearing Examiner's Office for consideration. See E-mail of Farnsworth 12-27-18, 12:25 PM.

DOCUMENTS REVIEWED

To facilitate consideration of the appeal, the City Clerk's office provided the Hearing Examiner with copies of the original public records request and the follow up e-mail communications between the parties. The Hearing Examiner also received redacted and unredacted copies of the SPD's Defense Tactics Manual, dated June 2016, along with the city's exemption log. The Hearing Examiner reviewed all of the foregoing documents in the process of making this decision.

FINDINGS AND CONCLUSIONS

This appeal presents a discrete issue, namely whether the City of Spokane properly determined that portions of the SPD's Defensive Tactics Manual were exempt from disclosure under the Public Records Act, Chapter 42.56 RCW (the "Act"). After reviewing the documents in question and reviewing the applicable law, the Hearing Examiner concludes that the city properly redacted the Manual because it contains "specific intelligence information" that is exempt from disclosure under the Act. The Hearing Examiner reaches this conclusion for the following reasons.

As the city determined, substantial portions of the Manual are exempt from disclosure pursuant to RCW 42.56.240(1). That provision of the Public Records Act states as follows:

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy...

See RCW 42.56.240(1) (emphasis added).

The Manual was put together by the SPD to identify and describe specific tactics to be employed by law enforcement officers. Thus, there is no question that the Manual was “compiled by law enforcement” within the meaning of the exemption. The Hearing Examiner further concludes that the nondisclosure of this type of information is “essential to effective law enforcement.” The Manual details specific techniques utilized by law enforcement officers when confronting threatening situations. The disclosure of this type of information could provide a blueprint for criminal actors to resist law enforcement or even anticipate or counteract police tactics. Finally, the Hearing Examiner finds that the information in the Manual constitutes “specific intelligence information” within the meaning of the exemption.

There is no statutory definition of “specific intelligence information.” However, Washington courts have looked to the common meaning of the statutory language, noting that “intelligence” means “the gathering or distribution of information, especially secret information,” or “information about an enemy” or “the evaluated conclusions drawn from such information.” See *King County v. Sheehan*, 114 Wn.App. 325, 337, 57 P.3d 307 (2002), *superseded on other grounds as recognized by* *Zink v. City of Mesa*, 4 Wn.App.2d 112, 125, 419 P.3d 847 (2018). The Manual both identifies and describes specific defensive tactics that may or can be deployed by police officers, in appropriate situations. The Manual describes the practical application of the identified techniques and tactics. Such approaches were undoubtedly developed or refined based upon experiences in the field, where officers face a variety of challenging situations, including violent behavior. The Hearing Examiner concludes that the Manual embodies “specific intelligence information” about how police officers carry out their duties.

The Hearing Examiner did not find any Washington cases that explicitly state that a tactical manual created by the police is exempt as “specific intelligence information.” However, there are several cases that provide guidance on the matter by analogy. For example, investigative questionnaires revealing how law enforcement officers evaluate informants are “specific intelligence information” that is exempt from disclosure. See *Haines-Marchel v. Department of Corrections*, 183 Wn. App. 655, 334 P.3d 99 (2014). If the methodology of evaluating informants was shared, the ability of the police to obtain reliable information would be compromised. See *id.*

Similarly, prison surveillance videos are exempt from disclosure, because the disclosure of such videos would reveal camera angles and coverage, which cameras were operational, which cameras were recording, and other information that would provide inmates with the ability to circumvent the security system. See *Gronquist v. Department of Corrections*, 177 Wn. App. 389, 313 P.3d 416 (2013) (holding that prison surveillance video recordings were exempt from disclosure); see also *Fischer v. Department of Corrections*, 160 Wn. App. 722, 254 P.3d 824 (2011) (same). Other examples of “specific intelligence information” might include things like data compiled by a criminal justice agency for purpose of criminal investigation; reports of informants or investigators; and information identifying confidential sources or subjects in organized crime investigations, among other matters. See *Sheehan*, 114 Wn.App. at 337-38 (listing examples from other jurisdictions).

Thus, the Washington courts have repeatedly held that documents describing the tactics, techniques and approaches of law enforcement constitute “specific intelligence information” which is not subject to disclosure under the Act. The Manual includes a list of specific defensive tactics, and describes how and when such tactics may be used by police officers. This information is not qualitatively different from the content of investigative questionnaires, prison surveillance videos, or data compiled for criminal investigations, to name a few examples. In each case, the documents relate to specific methods developed and used by law enforcement to detect criminal

activity, the investigate crime, to apprehend perpetrators, and to otherwise do the job. In the Hearing Examiner's assessment, the disclosure of such information would undermine the ability of the police to effectively enforce the law. For this reason, it is exempt from disclosure.

In the appeal, Mr. Dukes contends that the "titles of sections are not *specific* information" and therefore is not properly subject to redaction. See E-mail of Dukes, 12-19-18. The Hearing Examiner disagrees. The titles identify each tactic by name. The selection of those particular tactics is the result of the SPD's evaluation of the techniques at its disposal. Disclosure of the section titles would reveal which tactics the SPD has determined should be incorporated into police training. It would also provide a reader with sufficient information to learn, from outside sources, what those tactics involve and ways to counteract them. The Hearing Examiner concludes that the redaction of the titles to sections of the Manual was proper.

DECISION

The Hearing Examiner concludes that the redactions to the Spokane Police Department Defensive Tactics Manual justified under the circumstances of this case. The redacted information is exempt from disclosure under the Public Records Act, specifically pursuant to RCW 42.56.240(1) (specific intelligence information). As a result, the Hearing Examiner denies the appeal.

DATED this 8th day of January, 2019.



Brian McGinn
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL INDEPENDENT OF THIS DECISION

According to Section 6.5.3 of the City's Public Record Requests Policy, any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two (2) business days after the initial denial regardless of any internal administrative appeal.